

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 12.5.701 and 12.5.702, the	)	TRANSFER AND AMENDMENT,
transfer and amendment of ARM	)	ADOPTION, AND REPEAL
12.11.341, the adoption of New Rule	)	
I, and the repeal of ARM 12.11.342	)	
pertaining to aquatic invasive species	)	

TO: All Concerned Persons

1. On February 17, 2017, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-472 pertaining to the public hearing on the proposed amendment, transfer and amendment, adoption, and repeal of the above-stated rules at page 209 of the 2017 Montana Administrative Register, Issue Number 4.

2. The department has amended the following rules as proposed: ARM 12.5.701 and ARM 12.5.702.

3. The department has transferred and amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.5.706 IDENTIFIED AREAS THREATENED WITH AQUATIC INVASIVE SPECIES AND APPLICABLE QUARANTINE MEASURES (1) Because of the known existence of aquatic invasive mussels in the areas defined in ARM 12.5.707, the department has identified all other areas of the State of Montana as an invasive species management area because of the threat of ~~threatened for~~ infestation of aquatic invasive mussels.

(2) The department has determined the following quarantine measures are necessary to prevent the spread of aquatic invasive mussels:

(a) vessels and equipment approaching a department inspection station must stop for inspection as directed;

(b) remains as proposed.

(c) vessels and equipment traveling across the Continental Divide into the Columbia River Basin that have been used on waters outside of the Columbia River Basin must be inspected at ~~during operating hours report to~~ a department inspection station prior to launching within the Columbia River Basin ~~after use on waters outside of the Columbia River Basin~~. The department will post approved inspection stations and operating hours at fwp.mt.gov;

(d) remains as proposed.

(e) transport of surface water is prohibited unless authorized by the department ~~and drain plugs must be removed during transport~~;

(f) live aquatic bait and fish must be transported in clean non-surface water where allowed in current public fishing regulations; ~~and~~

(g) if the vessel does not have a drain plug, reasonable measures must be taken to dry or drain all compartments or spaces that hold water, including emptying bilges, applying absorbents, and ventilation; and-

~~(3)~~(h) areas subject to inspection include but are not limited to:

~~(a)~~(i) the exterior of the vessel;

~~(b)~~(ii) livewells;

~~(c)~~(iii) bait buckets;

~~(d)~~(iv) ballast tanks;

~~(e)~~(v) bilge areas; and

~~(f)~~(vi) trailer transporting vessel.

(4) remains as proposed but is renumbered (3).

~~(5)~~ (4) Decontamination methods on vessels subject to ~~(4)~~ (3) may include hot water washing, hot water flushing, and drying time, including interior portions of complex engine systems and pumps. A decontamination order may be issued that requires a drying period as directed by the department. The drying time will depend on weather conditions. During the drying period, the department may lock the vessel to the trailer to prevent launching. The department will be responsible for arranging the time and location to unlock the vessel when the drying time is complete. It is prohibited for anyone other than authorized department staff to remove the lock during the drying time. If a vessel requires a drying period as part of the decontamination process, then the vessel must pass a second inspection prior to launching in Montana waters in order to be considered decontaminated.

(5) Upon inspection and/or decontamination, proof of compliance on any requirements will be provided and must be shown upon request.

(6) and (7) remain as proposed.

AUTH: 80-7-1007, 80-7-1008, 80-7-1011, 80-7-1012, 87-1-201, MCA

IMP: 80-7-1007, 80-7-1008, 80-7-1010, 80-7-1011, 80-7-1015, MCA

4. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I [12.5.707] IDENTIFIED BODIES OF WATER CONFIRMED OR SUSPECTED FOR AQUATIC INVASIVE MUSSELS (1) The department has identified the following bodies of water as invasive species management areas because they are infested with confirmed or suspected aquatic invasive mussels:

(a) and (b) remain as proposed.

(2) The department has determined the following quarantine measures are necessary to prevent further spread of the species from these bodies of water:

(a) all vessels and equipment launched or having otherwise entered the water bodies listed in (1) must be inspected and, if directed by the department, decontaminated at a department decontamination station as required in ARM 12.5.706 prior to leaving the water body. The following are exempt:

(i) vessels approved by the department for local travel only (vessels approaching a department inspection station must still stop as directed pursuant to ARM 12.5.706);

(ii) emergency response vehicles and equipment engaged in emergency response activities.

(b) when an approved or decontaminated vessel leaves the water bodies listed in (1), all aquatic bait and fish must be transported without water.

(3) remains as proposed.

(4) Upon inspection and/or decontamination, proof of compliance on any requirements will be provided and must be shown upon request.

(4) remains as proposed but is renumbered (5).

AUTH: 80-7-1007, 80-7-1008, 80-7-1010, 87-1-201, MCA

IMP: 80-7-1008, 80-7-1010, 80-7-1011, MCA

5. The department has repealed the following rule as proposed: ARM 12.11.342.

6. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The department received comments concerning leaving Canyon Ferry or Tiber Reservoir and finding a decontamination station. The concerns included finding the right station, operating hours of the stations, and lines at the stations.

RESPONSE #1: The department has a plan for all major travel routes away from Canyon Ferry and Tiber Reservoir to be covered by decontamination stations. Operating hours of inspection and decontamination stations will be posted on fwp.mt.gov and signs will be posted at these reservoirs. The department realizes on busy weekends that there may be delay, and there are plans to have more than one decontamination station at each of these reservoirs to help alleviate congestion. Vessels that have been approved for local travel through the local boater program will not have to be decontaminated.

COMMENT #2: The department received several comments with concerns about live aquatic bait and fish being transported in clean non-surface water. Concerns included enforcement, how the department would be able to tell the difference between non-surface water and surface water, definition of what clean non-surface water means, if commercial bait seiners must also comply with this rule, and if leeches are considered bait.

RESPONSE #2: The department considers clean non-surface water as self-defining. Clean non-surface water means water that is not taken from a body of water. Examples of clean non-surface water would be well water, tap water, or water bought in stores. Leeches are considered bait, and bait seiners must comply with these rules. While there is no way of proving non-surface water from surface water, the department requires compliance with this rule.

COMMENT #3: The department received a comment concerning the removal of drain plugs because pontoon boats have permanent plugs and removal could cause damage to the boat.

RESPONSE #3: The department has removed the language requiring drain plugs to be removed during transport. Transport of surface water is prohibited, so boats that have removable drain plugs must still pull these plugs and drain their vessels before transporting.

COMMENT #4: The department received multiple comments concerning the "local travel only" rule language on Tiber and Canyon Ferry Reservoir. Comments were received concerning more specific details of what this meant, if these recreationists still needed to stop at inspection stations, who would be considered "local," and if local recreationists would be able to go to other bodies of water.

RESPONSE #4: Vessels approved for local travel only have been approved through the local boater program. The local boater program requires boaters to complete education training and sign an agreement, upon which they will be issued a local boater decal for each vessel registered in the program. The local boater program is designed for recreators who frequently use either Canyon Ferry or Tiber Reservoirs, allowing them to use local boater designated ramps and allowing for quick passage through decontamination stations. Local boaters that are planning to recreate on other waters must be decontaminated prior to launch. All watercraft is required to stop at inspection stations, regardless of local travel status. All vessels and equipment that are decontaminated will receive proof of decontamination in case it needs to be shown to enforcement.

COMMENT #5: The department received a comment suggesting that moored vessels be prohibited or restricted.

RESPONSE #5: The department does not have the authority to regulate moored vessels.

COMMENT #6: The department received several comments seeking clarification of "decontamination if necessary" on Tiber and Canyon Ferry Reservoirs.

RESPONSE #6: All vessels leaving Tiber or Canyon Ferry Reservoir must be inspected and decontaminated, unless the vessel has been approved for local travel only through the local boater program and is not traveling to a different water body.

COMMENT #7: The department received a few comments supporting closure of Tiber and Canyon Ferry Reservoirs completely, or until all access points could be monitored and all vessels could be inspected and decontaminated to ensure that other Montana waters do not get infested.

RESPONSE #7: Under ARM 12.5.707, all vessels and equipment leaving Tiber or Canyon Ferry Reservoir must be inspected and, unless approved for local travel only

through the local boater program, decontaminated. The department believes this will prevent over-land transport away from these two bodies of water while still allowing recreation.

COMMENT #8: The department received several comments seeking a language change of "department inspection station" to "FWP-sanctioned station" so that other entities could operate inspection stations.

RESPONSE #8: The department has determined that "department inspection station" refers to all stations either owned by the department or sanctioned by the department.

COMMENT #9: Several comments were received expressing that equipment used in any water sport or activity could potentially be a carrier for mussels and should be included in rule.

RESPONSE #9: The rule language states "vessels and equipment" and the department believes that this covers all equipment related to any water activity.

COMMENT #10: The department received a few comments opposing locking boats to trailers.

RESPONSE #10: This language was adopted in May 2016, and was not proposed to be changed in this rulemaking.

COMMENT #11: A few comments were received with concerns of animals being carriers of invasive species.

RESPONSE #11: It is possible for birds and wildlife to transport invasive species; however, watercraft have shown to be the biggest threat of transport.

COMMENT #12: The department received several comments about education, outreach, and signage around the state pertaining to aquatic invasive mussels.

RESPONSE #12: The department agrees that education and outreach is extremely important in the fight against aquatic invasive species. Signs will be constructed along main highways of Montana borders and at many waterbody access points. FWP has held open houses in Helena, Townsend, Butte, and Bozeman to try and further educate and outreach to the public. Information on AIS and on Clean, Drain, Dry protocols can be found at [fwp.mt.gov](http://fwp.mt.gov).

COMMENT #13: The department received multiple comments in general support of these proposed rule changes and efforts done by the department to protect Montana's waters.

RESPONSE #13: The department thanks you for your participation in this rulemaking.

COMMENT #14: The department received several comments about financing the mussel response. Comments varied from making boat owners pay an increased permit fee, to making all water users pay a fee instead of only boat owners, to questioning where funding will come from in general.

RESPONSE #14: The department is not changing any fee regulations with this rulemaking. The AIS program is funded by the legislature.

COMMENT #15: The department received comments stating that all vessels should be inspected, not just ones entering the state or coming from certain areas.

RESPONSE #15: While it is not required that vessels within the state seek out inspection stations every time they launch, all vessels that pass inspection stations within the state are required to stop.

COMMENT #16: The department received several comments concerning boats not being completely drained of water. Comments included concerns with ballast tanks, board motors, hulls, and wells.

RESPONSE #16: The department recognizes the challenge associated with draining some vessels. Where necessary, the department will use 140 degree F water to kill any residual mussels.

COMMENT #17: The department received a few comments opposing the proposed rules due to wasted funds, taxes paid, or too many regulations.

RESPONSE #17: Potential impacts of invasive species could be very detrimental to the State of Montana, economically and otherwise. The department believes the cost of prevention could avert some costs of potential impacts if the invasive species become more widespread. Therefore, it is better to pay for prevention now than risk paying for impacts later.

COMMENT #18: The department received a few comments suggesting longer hours for inspection stations to be open and more locations.

RESPONSE #18: There is a plan for some inspection stations to have longer hours than in the past. All hours will be posted on [fwp.mt.gov](http://fwp.mt.gov). The department is hiring more AIS staff to open more inspection stations.

COMMENT #19: The department received multiple comments concerning the penalization, fines, and enforcement behind recreationists who skip inspection stations or do not comply with these rules.

RESPONSE #19: The fines and penalties for violating these rules can be found under 80-7-1014, MCA. Enforcement has the authority to stop vehicles that fail to stop at inspection stations under 80-7-1019, MCA.

COMMENT #20: The department received comments expressing concerns of vessels entering the state. Concerns included vessels traveling into the state at night when inspection stations are closed and that all out of state watercraft in general should be banned from launching in Montana.

RESPONSE #20: ARM 12.5.706 states that all out of state vessels and equipment will be required to be inspected before entering any waterbody in Montana. Vessels entering the state do not need to be inspected immediately upon entering the state, but the vessel owner needs to seek out an open inspection station before launching in Montana waters. Inspection station hours will be posted on fwp.mt.gov.

COMMENT #21: The department received a few comments regarding the amount of time for a drying period.

RESPONSE #21: This language was adopted in May 2016, and was not proposed to be changed in this rulemaking.

COMMENT #22: The department received several comments regarding fishing derbies and tournaments.

RESPONSE #22: All vessels must comply with these rules, including all vessels participating in derbies or tournaments.

COMMENT #23: The department received comments regarding how vessels will be validated after inspection and/or decontamination.

RESPONSE #23: The department has amended the rule language to include that upon inspection and/or decontamination, proof of compliance will be given to the vessel owners. This proof must be shown to law enforcement upon request.

COMMENT #24: The department received a comment regarding transporting surface water for the purpose of collecting water samples for labs.

RESPONSE #24: The department has amended the rule language to allow samples to be transported where authorized by the department.

COMMENT #25: The department received a few comments on how vessels entering the Columbia River Basin will be inspected if crossing at night and if they will be required to be inspected during winter months.

RESPONSE #25: Vessels do not have to be inspected upon immediately entering the basin, but it is up to the vessel owner to seek out an open inspection station before launching in the Columbia River Basin if the vessel has been launched in waters outside the basin. Inspection station hours will be posted on fwp.mt.gov. The department has amended this section to clarify the intent. Inspection stations will be operational during the boating season.

COMMENT #26: The department received a comment questioning what decontamination methods will be used.

RESPONSE #26: The decontamination methods are listed in ARM 12.5.706(4).

COMMENT #27: The department received several comments stating suggestions for improvements to the overall AIS program outside the scope of this rulemaking.

RESPONSE #27: The department values and appreciates these suggestions and will evaluate these comments for the future advancements in the AIS program.

COMMENT #28: A few comments were received that were concerned about emergency response vehicles being exempt from the rules.

RESPONSE #28: Emergency response vehicles are only exempt "when engaging in emergency response activities"; they will be required to follow these rules during all other times.

COMMENT #29: A comment was received concerning these rules being subject to environmental review as required by the Montana Environmental Policy Act.

RESPONSE #29: These rules are primarily social and economic in nature and are based on actions boaters must take in order to legally recreate. The MEPA model rules state that MEPA is not required for actions which are primarily social or economic in nature. The department does environmental review where appropriate, including for leased inspection and decontamination station sites.

COMMENT #30: The department received a few comments questioning why the Missouri River and Milk River were not included in New Rule I [ARM 12.5.707].

RESPONSE #30: Currently the threat of invasive mussels from Canyon Ferry and Tiber Reservoirs warrants listing them as invasive species management areas; other water bodies will be listed as necessary.

COMMENT #31: The department received a comment requesting that the department develop an easier way for the public to comment, including a yes or no checkbox on proposed rules.



RESPONSE #31: The department allowed for written comment to be submitted via the FWP website, e-mail, postal mail, and held a public hearing. The department allows for free expression of public views, data, and arguments to make a reasoned and informed decision. The department feels that a yes or no checkbox would limit free expression.

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

/s/ Martha Williams  
Martha Williams  
Director  
Department of Fish, Wildlife and Parks

Certified to the Secretary of State April 3, 2017.